

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:04
PLR-113780-19

Date:
December 04, 2019

Legend

Distributing =

Controlled A =

Controlled B =

Controlled C =

Controlled D =

Controlled E =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Shareholder 5 =

Shareholder 6 =

Shareholder 7 =

Shareholder 8 =

Shareholder 9 =

Shareholder 10 =

State =

Business =

a% =

b% =

c% =

d% =

e% =

Date 1 =

Dear _____ :

This letter responds to your letter dated June 7, 2019, as supplemented by subsequent information and documentation, requesting rulings on certain federal income tax consequences of the proposed transaction steps described below. The information submitted in that letter and in subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more "Covered Transactions" under section 355 and/or section 368 of the Internal Revenue Code (the "Code"). This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether any of the distributions (as described below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of one or more of the six corporations (defined below) (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporations, or any predecessor or successor of the distributing corporation or the controlled corporations within the meaning of Treas. Reg. § 1.355-8T (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing is a closely held State A corporation that operates Business. Distributing has made an election under section 1362(a) to be treated as a subchapter S corporation (within the meaning of section 1361(a)) as of Date 1. Distributing has one class of common stock outstanding that is owned by ten shareholders ("Shareholder 1", "Shareholder 2", "Shareholder 3", "Shareholder 4", "Shareholder 5", "Shareholder 6", "Shareholder 7", "Shareholder 8", "Shareholder 9", and "Shareholder 10"). Shareholder 1 serves as Distributing's manager.

Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that Business has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transaction

For what are represented to be valid business purposes, Distributing proposes to engage in the following transaction (the "Proposed Transaction"):

1. Distributing will form five separate controlled corporations: Controlled A, Controlled B, Controlled C, Controlled D, and Controlled E (collectively with Distributing, the "six corporations"). Each controlled corporation will make an election under section 1362(a) to be treated as a subchapter S corporation (within the meaning of section 1361(a)). Each controlled corporation will have one class of stock outstanding, all of which will be owned directly by Distributing.
2. Distributing will transfer a% of its assets to Controlled A in exchange for all of the stock of Controlled A ("Contribution A").
3. Distributing will transfer b% of its assets to Controlled B in exchange for all of the stock of Controlled B ("Contribution B").
4. Distributing will transfer c% of its assets to Controlled C in exchange for all of the stock of Controlled C ("Contribution C").
5. Distributing will transfer d% of its assets to Controlled D in exchange for all of the stock of Controlled D ("Contribution D").
6. Distributing will transfer e% of its assets to Controlled E in exchange for all of the stock of Controlled E ("Contribution E").
7. Distributing will distribute all of its Controlled A stock to Shareholder 1, Shareholder 2, and Shareholder 3 in exchange for all of their Distributing stock ("Distribution 1").
8. Distributing will distribute all of its Controlled B stock to Shareholder 4 in exchange for all of Shareholder 4's Distributing stock ("Distribution 2").
9. Distributing will distribute all of its Controlled C stock to Shareholder 5 in exchange for all of Shareholder 5's Distributing stock ("Distribution 3").
10. Distributing will distribute all of its Controlled D stock to Shareholder 6 in exchange for all of Shareholder 6's Distributing stock ("Distribution 4").
11. Distributing will distribute all of its Controlled E stock to Shareholder 7, Shareholder 8, Shareholder 9, and Shareholder 10 in exchange for all of their Distributing stock ("Distribution 5").
12. Distributing will be liquidated as part of the reorganization.

Representations

Except as set forth below, Distributing makes all the representations in section 3 of the Appendix to Rev. Proc. 2017-52 in the form set forth therein.

1. Distributing has not made the following representations, which do not apply to the Proposed Transaction: 5, 6, 17, 19, 20, 36, 37, 38, 36, 37, 38, 39, and 40.
2. Distributing has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52: 3(a), 8(a), 11(a), 15(a), 22(a), 31(a) and 41(b).
3. Distributing has made the following representation concerning Rev. Proc. 2018-53: Distributing does not currently have, and will not have at the time of the Proposed Transaction, any Distributing Debt within the meaning of section 3.01 of Rev. Proc. 2018-53.

Rulings

Based solely on the information submitted and the representations made, we rule as follows with respect to the Proposed Transaction:

1. Each of Contribution A, Contribution B, Contribution C, Contribution D, and Contribution E, together with Distribution 1, Distribution 2, Distribution 3, Distribution 4, and Distribution 5 followed by the liquidation of Distributing, will be a reorganization within the meaning of section 368(a)(1)(D). The six corporations will each be "a party to a reorganization" within the meaning of section 368(b).
2. No gain or loss will be recognized by Distributing on Contribution A, Contribution B, Contribution C, Contribution D, or Contribution E. Sections 357(a) and 361(a).
3. No gain or loss will be recognized by Controlled A, Controlled B, Controlled C, Controlled D or Controlled E on Contribution A, Contribution B, Contribution C, Contribution D, or Contribution E, respectively. Section 1032(a).
4. Controlled A's basis in each asset received from Distributing in Contribution A will equal the basis of such asset in the hands of Distributing immediately before its transfer. Section 362(b).
5. Controlled B's basis in each asset received from Distributing in Contribution B will equal the basis of such asset in the hands of Distributing immediately before its transfer. Section 362(b).

6. Controlled C's basis in each asset received from Distributing in Contribution C will equal the basis of such asset in the hands of Distributing immediately before its transfer. Section 362(b).
7. Controlled D's basis in each asset received from Distributing in Contribution D will equal the basis of such asset in the hands of Distributing immediately before its transfer. Section 362(b).
8. Controlled E's basis in each asset received from Distributing in Contribution E will equal the basis of such asset in the hands of Distributing immediately before its transfer. Section 362(b).
9. The holding period for each asset received by Controlled A in Contribution A will include the period during which such asset was held by Distributing. Section 1223(2).
10. The holding period for each asset received by Controlled B in Contribution B will include the period during which such asset was held by Distributing. Section 1223(2).
11. The holding period for each asset received by Controlled C in Contribution C will include the period during which such asset was held by Distributing. Section 1223(2).
12. The holding period for each asset received by Controlled D in Contribution D will include the period during which such asset was held by Distributing. Section 1223(2).
13. The holding period for each asset received by Controlled E in Contribution E will include the period during which such asset was held by Distributing. Section 1223(2).
14. No gain or loss will be recognized by Distributing on Distribution 1, Distribution 2, Distribution 3, Distribution 4, or Distribution 5. Section 361(c)(1).
15. No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder 1, Shareholder 2, or Shareholder 3 upon receipt of Controlled A stock in Distribution 1. Section 355(a)(1).
16. No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder 4 upon receipt of Controlled B stock in Distribution 2. Section 355(a)(1).

17. No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder 5 upon receipt of Controlled C stock in Distribution 3. Section 355(a)(1).
18. No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder 6 upon receipt of Controlled D stock in Distribution 4. Section 355(a)(1).
19. No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder 7, Shareholder 8, Shareholder 9, or Shareholder 10 upon receipt of Controlled E stock in Distribution 5. Section 355(a)(1).
20. The aggregate basis of the Controlled A stock received by Shareholder 1, Shareholder 2, and Shareholder 3 immediately after Distribution 1 will be the same as such shareholder's aggregate basis in the Distributing stock surrendered in exchange therefor, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1) and (b).
21. The aggregate basis of the Controlled B stock received by Shareholder 4 immediately after Distribution 2 will be the same as Shareholder 4's aggregate basis in the Distributing stock surrendered in exchange therefor, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1) and (b).
22. The aggregate basis of the Controlled C stock received by Shareholder 5 immediately after Distribution 3 will be the same as Shareholder 5's aggregate basis in the Distributing stock surrendered in exchange therefor, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1) and (b).
23. The aggregate basis of the Controlled D stock received by Shareholder 6 immediately after Distribution 4 will be the same as Shareholder 6's aggregate basis in the Distributing stock surrendered in exchange therefor, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1) and (b).
24. The aggregate basis of the Controlled E stock received by Shareholder 7, Shareholder 8, Shareholder 9, and Shareholder 10 immediately after Distribution 5 will be the same as such shareholder's aggregate basis in the Distributing stock surrendered in exchange therefor, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1) and (b).
25. The holding period of the Controlled A stock received by Shareholder 1, Shareholder 2, and Shareholder 3 in Distribution 1 will include the holding period of the Distributing stock exchanged therefor, provided that such Distributing stock is held as a capital asset on the date of Distribution 1. Section 1223(1).

26. The holding period of the Controlled B stock received by Shareholder 4 in Distribution 2 will include the holding period of the Distributing stock exchanged therefor, provided that such Distributing stock is held as a capital asset on the date of Distribution 2. Section 1223(1).
27. The holding period of the Controlled C stock received by Shareholder 5 in Distribution 3 will include the holding period of the Distributing stock exchanged therefor, provided that such Distributing stock is held as a capital asset on the date of Distribution 3. Section 1223(1).
28. The holding period of the Controlled D stock received by Shareholder 6 in Distribution 4 will include the holding period of the Distributing stock exchanged therefor, provided that such Distributing stock is held as a capital asset on the date of Distribution 4. Section 1223(1).
29. The holding period of the Controlled E stock received by Shareholder 7, Shareholder 8, Shareholder 9, and Shareholder 10 in Distribution 5 will include the holding period of the Distributing stock exchanged therefor, provided that such Distributing stock is held as a capital asset on the date of Distribution 5. Section 1223(1).
30. Distributing's earnings and profits will be allocated between Controlled A, Controlled B, Controlled C, Controlled D, and Controlled E in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
31. Distributing's accumulated adjustments account will be allocated between Controlled A, Controlled B, Controlled C, Controlled D, and Controlled E in a manner similar to the manner in which the earnings and profits of Distributing will be allocated under section 312(h) in accordance with Treas. Reg. § 1.1368-2(d)(3).
32. Provided that Distribution 1, Distribution 2, Distribution 3, Distribution 4, and Distribution 5 are undertaken immediately after Contribution A, Contribution B, Contribution C, Contribution D, and Contribution E, Distributing's momentary ownership of the stock of Controlled A, Controlled B, Controlled C, Controlled D, and Controlled E, as part of the reorganization under section 368(a)(1)(D), will not cause Controlled A, Controlled B, Controlled C, Controlled D, or Controlled E to have an ineligible shareholder for any portion of their respective first taxable year under section 1361(b)(1)(B) and will not, in itself, render Controlled A, Controlled B, Controlled C, Controlled D, or Controlled E ineligible to elect to be a subchapter S corporation for its respective first taxable year.

Caveats

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied as to whether Distributing pays reasonable compensation to Shareholder 1, including for services rendered as an employee. See section 1366(e), Treas. Reg. § 1.1366-3(a), and Rev. Rul. 74-44, 1974-1 C.B. 287.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Justin O. Kellar
Assistant to Branch Chief, Branch 3
Office of Chief Counsel (Corporate)